IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4059 OF 2006

Shri Govind Suryawanshi ..Petitioner

Vs.

Shri Suresh Pandurang Shinde and ors. ..Respondents

Mr. A.S. Parulekar i/by M/s. Parulekar and Associates for petitioner.
Mr. J.P. Cama, Senior Counsel with Mrs. Neeta Karnik for respondent nos.1,2, 4 to 7.
Mr. A.H. Palekar, AGP for respondent no.5.
Mr. S.K. Talsania, Senior Counsel with Mr. A.K. Jalisatgi for respondent nos.9, 10, 12 and 13.

CORAM: B.H. MARLAPALLE, J.

Date : August 8, 2006.

P.C.:

1. Heard Mr. Parulekar i/by M/s. Parulekar and Associates for the petitioner, Mr. Cama, the learned Senior Counsel with Mrs. Neeta Karnik for respondent nos.1,2, 4 to 7 and Mr. Talsania, the learned Senior Counsel with Mr. Jalisatgi for respondent nos.9, 10, 12 and 13.

2. This petition filed under Article 227 of the Constitution arises from an order passed by the learned Member of the Industrial Court at Thane on

24/4/2006 below Exhibit U-9 filed in Application (ICTU) No.1 of 2006.

3. The petitioner claims to be a member of the respondent no.9-Union i.e. T.M.P. Employees Union and he was impleaded as opponent no.5 in Application (ICTU) No.1 of 2006 before the Industrial Court and the said application was filed by the present respondent nos.1 to 8 with the present respondent nos.9 to 14 as the original opponents nos.1 to 4 and 6 to 7. On or about 27/4/2006 the petitioner and respondent nos.9 to 14 declared the elections for the office bearers of the respondent no.9-Union. The respondent nos.1 to 8 took exception to this act and approached the Deputy Registrar of Trade Unions under Section 28(1A) of the Trade Unions Act, 1926 by filing an application in Form No.K. The Deputy Registrar admitted the dispute and issued the consent certificate on 10/4/2006 on the grounds that in the application made by the respondent nos.1 to 8, the following issues required adjudication by the Industrial Court:-

(a) Whether the President and General Secretary and other officer bearers are the

office bearers of T.M.T. Employees Union?

(b) Whether they are legally authorised to hold the election of T.M.T. Employees Union?

. Consequently, Application (ICTU) No.1 of 2006 came to be presented before the Industrial Court at Thane on or about 18/4/2006 along with an application for interim relief. The original opponents filed say opposing the application as well as the prayer for interim relief. It was pointed out by them that opponent no.7 was already appointed as a Returning Officer for holding the elections scheduled to take place on 27/4/2006 and while the main dispute was pending on the issues raised in the consent certificate, it was not just and proper to interfere with the election process and that the elections announced by the opponents ought to be continued and they have to be permitted to hold the elections. After hearing both the parties, the learned Member of the Industrial Court by the impugned order allowed the application at Exh.U-9 and stayed the election process announced by the opponents and to be conducted by opponent no.7 who was appointed as the Returning Officer. The Industrial Court appointed the Deputy Registrar of the Trade Unions as the Administrator for

the opponent no.9-Union and directed him to hold the general body meeting before 30/5/2006 and decide the modality and procedure of holding elections to the office bearers and executive committee posts as per Clause 11 of the unions constitution and to ensure that the elections process is completed by 30/6/2006. The Industrial Court further directed that all the members who had paid their subscription for the year 2005 shall be permitted to participate in the election and if those who had not paid the membership subscription, on their payment, they should be allowed provided that they paid subscription for the earlier year i.e. 2004. The annual general body meeting was held on 25/5/2006 and the elections for the posts of President, Vice President, General Secretary, Executive Secretary, Secretary and Treasurer as well as 30 members of the Managing Committee was decided to be held by category wise. However, on the issue of electing 30 executive committee members category wise there was difference of opinion in the general body meeting and the issue was put to vote, 75% of the members present were in favour of holding the elections without representing the different categories, whereas 25% of them were in favour of

holding the elections category wise. This led to the Deputy Registrar filing an application for modification of the earlier order dated 24/4/2006 and the learned Member of the Industrial Court by his order dated 28/6/2006 was pleased to direct to hold the elections category wise. However, again there was some confusion regarding the voting rights, namely, the voters from one category would be eligible to vote for the candidate representing their category or to all the 30 committee members. The learned Member of the Industrial Court, therefore, clarified by his further order dated 15/7/2006 that the elections will be held general category which implied that even though the 30 posts will be earmarked as under for respective category, the members will exercise their right to elect all 30 executive committee members. The date was further extended from 30-6-2005 to 15-8-2006 by the order dated 28-6-06 below Exh.U9.

(a) Conductor - 9
(b) Driver - 8
(c) Traffic Controller - 3
(d) Mechanic - 1 & 2 - 3
(e) Helpers - 3
(f) Clerk - 1
(g) Peon, Cleaner and Guards/Watchman - 1
(h) Assistant Traffic Inspector - 2

Total- 30

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4. Mr. Talsania, the learned Senior Counsel while supporting the challenge to the impugned order submitted that the original opponent nos.1 to 7 were duly elected as the office bearers of the Union and they were entitled to hold the elections. When the disputes were pending for adjudication including the authority of the opponent nos.1 to 7 to hold the elections, it was not permissible for the Industrial Court to appoint Deputy Registrar as the Administrator and direct him to hold the elections and, therefore, the impugned order amounted to a final adjudication on one of the issues which were referred by the consent certificate. The learned counsel for the petitioner has adopted the arguments advanced by Mr. Talsania, the learned Senior Counsel.

5. The learned Member of the Industrial Court in the impugned order has referred to Clause 11 and Clause 22 which read as under and noted that prima facie there was nothing placed on record to show that from the year 2000 till the elections were pronounced any of the opponents were elected as office bearers of the Union and, therefore, they could not have the

authority to hold the elections:-

Clause No.11

The union shall have a President not more than two Vice presidents, a general secretary, one organizing secretary and not more than one Secretary and a Treasurer. All of them shall be elected at the Annual General Meeting of the Union and they shall be eligible for re-election.

Clause No.22

The Annual General Meeting of all the members of the union should be convened annually to transact the following business.

(a) To adopt the report of the work done by the union and the audited statement of accounts.

(b) To elect the office bearers and other members of the executive committee for the current year and

(c) To transact such other business as may be brought forward with the permission of the chairman.

6. Before this court Mr. Talsania submitted that the Union was registered sometimes in the year 1990 and the first election was held in 1993, whereas the second election was held in the year 2000 and the opponent nos.1 to 7 were elected as the office bearers in the said elections held in the year 2000. Clause 22, as reproduced hereinabove, states that the elections will be held in the annual general meeting

convened and, therefore, it was necessary to place on record the minutes of the annual general meeting held in the year 2000. Even if it is accepted that such an election was held, the fact remains that no further election was held till the election was announced to be held on 27/4/2006 by the opponent nos.1 to 7. Clause No.11 of the union's constitution states that there shall be seven office bearers and shall be elected at the annual general meeting of the Union and they shall be eligible for re-election. Thus, there has to be an election every year for electing the office bearers. The Trade Unions Act, 1926 underwent some drastic amendments in the year 2001 i.e. by Act 31 of 2001 and Clause (hh) has been added below Section 6 of the said Act and reads as under:-

> (hh) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected.

7. This added provision makes it clear that in the Trade Union Constitution the tenure of any elected body cannot be for more than three years and the elections are required to be held as per the constitution of the union and in any case once in

three years must be held. As per the provisions of Section 6(hh) of the Trade Unions Act the opponents in any case could not hold the office of either President, Vice President, Secretary etc. (any of the seven office bearers) after a period of three years i.e. beyond the year 2003 and, therefore, the prima facie conclusions arrived at by the Industrial Court that the opponent nos.1 to 7 did not have the locus to take upon themselves the authority to announce to hold the elections.

8. Secondly, when the elections have not been held for more than 5-6 years, it was necessary that the elections take place and, therefore, the learned Member of the Industrial Court proceeded to appoint the Deputy Registrar as the Administrator and he was empowered to hold the annual general meeting to work out the modality and procedure for holding the elections and, in fact, to hold the elections for 7 posts of office bearers and 30 posts of the executive committee. The order passed by the Industrial Court is in keeping with the requirements that the elections of a democratic body must be held in time and they should not be delayed any further during the

adjudication on the issues referred in the consent certificate and raised in the application pending. Thus, the order passed by the learned Member of the Industrial Court on 24/4/2006 cannot be termed as perverse or palpably erroneous so as to call for any interference in this petition under Article 227 of the Constitution.

9. As noted earlier, in the annual general meeting held on 25/5/2006 there was difference of opinion on the procedure to be followed for holding the elections, namely, one group was in favour of continuing the exiting practice whereas the other majority group was in favour of doing away with the existing practice. Admittedly, the constitution of the union does not speak of 30 members to be elected from category wise but the learned Member of the Industrial Court found it appropriate and just to follow the old practice and in the last order passed on 15/7/2006 directed that the old practice shall be continued and all the members who are found to be eligible to vote will be entitled to cast their votes for all the 30 posts, in addition to the 7 office bearers. In fact, the original opponent nos.1 to 7

were in favour of such a procedure i.e. category wise posts and voting also category wise. This second submission of the opponent has not been accepted by the learned Member of the Industrial Court. Permitting elections general category wise is a possible view and appears to be by way of a compromise between the two different opinions in as much as the vast majority wanted a general election whereas the original opponents wanted the elections category wise. What has been finally ordered on 15/7/2006 is a compromise between the two and, therefore, there is no necessity to interfere with the order dated 15/7/2006, as well. This method adopted by the Court below need not be a precedence for the future and the Union is not estopped from moving an amendment in the constitution.

10. The issues referred for adjudication have not been decided by the order passed to proceed with the elections with the Deputy Registrar as the Administrator and those issues will have to be adjudicated upon. The necessity to hold the elections has been kept in mind by the Industrial Court and elections were directed to be held by the

Administrator and the opponents were kept away from the same on the prima facie conclusions that they did not hold any authority as the duly elected office bearers, as noted earlier.

11. In the premises this petition fails at the threshold and the same is hereby rejected summarily. The elections as scheduled and as per the directions of the Industrial Court shall proceed.

(B.H. Marlapalle,J.)